

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARCOS POVENTUD,

Plaintiff,

-against-

CITY OF NEW YORK; ROBERT T. JOHNSON, as
District Attorney, Bronx County; DANIEL
TOOHEY, "FRANKIE" ROSADO, CHRISTOPHER
DOLAN, KENNETH UMLAUFT, Individually and
as Members of the New York City Police
Department,

Defendants.

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**ANSWER OF DEFENDANTS
CITY OF NEW YORK, ROBERT
T. JOHNSON, KENNETH
UMLAUFT, AND FRANKIE
ROSADO**

07 CV 3998 (GEL)

JURY TRIAL DEMANDED

Defendants City of New York, Robert T. Johnson, Kenneth Umlauf, and
Frankie Rosado,¹ for their answer to the complaint, respectfully allege, upon information
and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint,
except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint.
3. Deny the allegations set forth in paragraph "3" of the complaint.
4. Deny the allegations set forth in paragraph "4" of the complaint.
5. Deny the allegations set forth in paragraph "5" of the complaint.
6. Deny knowledge or information sufficient to form a belief as to the
truth of the allegations set forth in paragraph "6" of the complaint.

¹ Upon information and belief, Christopher Dolan and Daniel Toohey have not been
served with process in this case.

7. Deny the allegations set forth in paragraph “7” of the complaint, except admit that the City of New York is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Deny the allegations set forth in paragraph “7” of the complaint, except admit that Robert T. Johnson is the Bronx County District Attorney and that plaintiff purports to bring this action as stated therein.

9. Deny the allegations set forth in paragraph “9” of the complaint, except admit that Daniel Toohey has retired from the New York City Police Department and that plaintiff purports to bring this action as stated therein.

10. Deny the allegations set forth in paragraph “10” of the complaint, except admit that Frankie Rosado is currently employed by the New York City Police Department and that plaintiff purports to bring this action as stated therein.

11. Deny the allegations set forth in paragraph “11” of the complaint, except admit that Christopher Dolan has retired from the New York City Police Department and that plaintiff purports to bring this action as stated therein.

12. Deny the allegations set forth in paragraph “10” of the complaint, except admit that Kenneth Umlauf is currently employed by the New York City Police Department and that plaintiff purports to bring this action as stated therein.

13. The allegations set forth in paragraph “13” of the complaint contain legal conclusions to which no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph “13” of the complaint.

14. Deny the allegations set forth in paragraph “14” of the complaint, except admit that the District Attorney’s Office of Bronx County is an agency organized and existing under and by virtue of the New York County Law.

15. Paragraph “15” of the complaint contains no averments of fact and, accordingly, no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph “15” of the complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “16” of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “17” of the complaint, and respectfully refer the Court to the relevant state court judgment.

18. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “18” of the complaint, and respectfully refer the Court to the state court transcript of plaintiff’s sentencing.

19. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “19” of the complaint, and respectfully refer the Court to the relevant state court order.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the complaint, and respectfully refer the Court to the relevant state court decision.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the complaint, and respectfully refer the Court to the relevant state court transcript.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the complaint, and respectfully refer the Court to the relevant state court motions.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the complaint, and respectfully refer the Court to the relevant state court decision.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the complaint, and respectfully refer the Court to the relevant state court transcripts.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “25” of the complaint, and respectfully refer the Court to the relevant state court transcripts.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26.”

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint, and respectfully refer the Court to the state court transcript of plaintiff’s sentencing.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the complaint.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “40” of the complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “41” of the complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “42” of the complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “43” of the complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “44” of the complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “45” of the complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “46” of the complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “47” of the complaint.

48. Deny the allegations set forth in paragraph “48” of the complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “49” of the complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “50” of the complaint, except admit that records reflect that plaintiff was indicted.

51. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “51” of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “52” of the complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “53” of the complaint.

54. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “54” of the complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “55” of the complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “56” of the complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “57” of the complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “20” of the complaint.

59. Deny the allegations set forth in paragraph “59” of the complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “62” of the complaint.

63. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “63” of the complaint.

64. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “64” of the complaint.

65. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “65” of the complaint.

66. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “66” of the complaint.

67. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “67” of the complaint.

68. Paragraph “68” of the complaint contains no averments of fact and, accordingly, no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph “68” of the complaint.

69. Deny the allegations set forth in paragraph “69” of the complaint.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “70” of the complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “71” of the complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “72” of the complaint.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “73” of the complaint.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “74” of the complaint.

75. Deny the allegations set forth in paragraph “75” of the complaint, and respectfully refer the Court to the Appellate Division’s decision for a true and accurate statement of its contents.

76. Deny the allegations set forth in paragraph “76” of the complaint, and respectfully refer the Court to the Appellate Division’s decision for a true and accurate statement of its contents.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “77” of the complaint.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “78” of the complaint.

79. Deny the allegations set forth in paragraph “79” of the complaint, except admit there was an acquittal.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “80” of the complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “81” of the complaint.

82. Deny the allegations set forth in paragraph “82” of the complaint, and respectfully refer the Court to the Supreme Court’s decision for a true and accurate statement of its contents.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “83” of the complaint.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “84” of the complaint.

85. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “85” of the complaint.

86. Deny knowledge or information sufficient to form a belief as to the truth the allegations set forth in paragraph “86” of the complaint.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “87” of the complaint.

88. Deny the allegations set forth in paragraph “88” of the complaint and all of its subparts.

89. In response to the allegations set forth in paragraph “89” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “88” of this answer as if fully set forth herein.

90. Deny the allegations set forth in paragraph “90” of the complaint and all of its subparts.

91. Deny the allegations set forth in paragraph “91” of the complaint.

92. Deny the allegations set forth in paragraph “92” of the complaint.

93. Deny the allegations set forth in paragraph “93” of the complaint.

94. Deny the allegations set forth in paragraph “94” of the complaint.

95. Deny the allegations set forth in paragraph “95” of the complaint.

96. Deny the allegations set forth in paragraph “96” of the complaint.

97. Deny the allegations set forth in paragraph “97” of the complaint.

98. Deny the allegations set forth in paragraph “98” of the complaint.

99. Deny the allegations set forth in paragraph “99” of the complaint.

100. Deny the allegations set forth in paragraph “100” of the complaint.

101. Deny the allegations set forth in paragraph “101” of the complaint.

102. Deny the allegations set forth in paragraph “102” of the complaint and all of its subparts.

103. Deny the allegations set forth in paragraph “103” of the complaint.

104. Deny the allegations set forth in paragraph “104” of the complaint.

105. Deny the allegations set forth in paragraph “105” of the complaint.

106. Deny the allegations set forth in paragraph “106” of the complaint.

107. In response to the allegations set forth in paragraph “107” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “106” of this answer as if fully set forth herein.

108. Deny the allegations set forth in paragraph “108” of the complaint and all of its subparts.

109. Deny the allegations set forth in paragraph “109” of the complaint and all of its subparts.

110. Deny the allegations set forth in paragraph “110” of the complaint.

111. Deny the allegations set forth in paragraph “111” of the complaint.

112. Deny the allegations set forth in paragraph “112” of the complaint.

113. Deny the allegations set forth in paragraph “113” of the complaint.

114. Deny the allegations set forth in paragraph “114” of the complaint.

115. Deny the allegations set forth in paragraph “115” of the complaint.

116. Deny the allegations set forth in paragraph “116” of the complaint.

117. Deny the allegations set forth in paragraph “117” of the complaint, except admit that the District Attorney maintains an office in Bronx County.

118. Paragraph “118” of the complaint contains no averments of fact and, accordingly, no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph “118” of the complaint.

119. Paragraph “119” of the complaint contains no averments of fact and, accordingly, no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph “118” of the complaint.

120. Deny the allegations set forth in paragraph “120” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

121. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

122. There was probable cause for plaintiff’s arrest, detention, and prosecution.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

123. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has it violated any act of Congress providing for the protection of civil rights.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

124. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct or the culpable or negligent conduct of non-parties and was not the proximate result of any act of defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

125. At all times relevant to the acts alleged in the complaint, defendant acted reasonably and properly in the lawful exercise of its discretion. Therefore, it is entitled to governmental immunity from liability.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

126. Defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and are therefore protected by qualified immunity from liability.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

127. Punitive damages are not recoverable against the City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

128. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

Dated: New York, New York
September 13, 2007

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By: _____
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